DEFINITIONS

As used in above and foregoing jurisdictional statement and in the record the following names, terms, expressions and abbreviations will have the meanings hereinafter indicated and in some instances identifying and explanatory matter is set forth:

"Abraham"—Arthur Abraham

Attorney Abraham with attorney Dordek was attorney for defendants in these proceedings until August 1, 1962 when the Winston firm was substituted as attorneys for defendants in lieu of Abraham and Dordek. Since May 1960 Abraham and Dordek have officed together and have been associated in the practice of law. 1 abs 135; 2 abs 516.

"Bjork"—David T. Bjork

Bjork was former valuation engineer for WAA and in that capacity in November 1947 appraised the fair cash market value of the Rockdale properties at $1,508,000.

In these proceedings Bjork testified for Lahman that the May 29, 1950 fair cash market value of the Rockdale properties was $1,541,920.

"Cherkas"—Byron S. Cherkas

Cherkas was a certified public accountant who had an office at 100 North La Salle street Chicago. In April 1951 the loan company employed him to audit and oversee its books and later to oversee the books and records of Interlake. He was in the loan company's office on the average of once a week and really kept a continuous audit of its books and records. He continued in that capacity until the end of 1956 when he moved to Miami Florida. 4 abs 292-94.

"Dordek"—Israel Dordek

Attorney Dordek with attorney Abraham was attorney for defendants in these proceedings until August 1, 1962 when the Winston firm was substituted as attorneys for defendants in lieu of Abraham and Dordek. Dordek is presently counsel for defendant, loan company, and does some work for them. Dordek is also attorney for the estate of W. E. Gould, deceased, which is still pending in the probate court. 1 abs. 135; 2 abs 517.

"Frantz"—Frantz Manufacturing Company an Illinois corporation.

"GSA"—The General Services Administration

The GSA was a federal governmental agency established by the Federal Property and Administrative Services Act of 1949 (63 *Stat* 377; *U.S. Code Cong Service* 1949 p 372) and as of July 1, 1949 took over the functions, records, property, personnel, obligations and commitments of the WAA.

"Gould"—W. E. Gould

Gould, now deceased, was one of the defendants prior to his death December 21, 1958.

"Mrs. Gould"—Harriet B. Gould

Mrs. Gould is widow of Gould and executor of his will, and since January 13, 1959, as such executor, has been one of the defendants.

"Grant"—William H. Grant.

Grant is a son-in-law of Gould, deceased, and since Gould's death December 21, 1958 has been an active official of defendant, loan company, and has been active in these proceedings on behalf of defendants. 2 abs 488.

"Harkrider"—Raymond Harkrider

Attorney Harkrider since prior to November 16, 1960 has been attorney for Lahman and has been in charge of these proceedings. 2 abs 495.

"Hensel"—Glen T. Hensel

Hensel was a real estate broker who conducted business in Joliet, Illinois, under the name of Glen T. Hensel Agency. R. S. Kelley was associated with Hensel. Hensel and Kelley performed services as brokers in the sale of the Rockdale properties by WAA to Lahman and Brubaker and later were retained by Lahman to procure tenants for these properties. 4 abs 38.

"Holley"—Robert E. Holley

Holley was a real estate broker who had office in The First National Bank building, Chicago. He was retained by Lahman to help procure tenants for the Rockdale properties. 4 abs 38, 39.

"Hornoff"—Albin T. Hornoff

Hornoff testified in these proceedings for defendants as to May 29, 1950 fair cash market value of the Rockdale properties.

"Interlake"—Interlake Industries Corporation an Illinois corporation.

"Mrs. Kolkey"—Florence E. Kolkey

Mrs. Kolkey worked in the loan company's office since March of 1945. For about five years she worked part time and took care of receipts that came in. Thereafter she worked full time as a bookkeeper and did typing and performed other miscellaneous duties in the office. 4 abs 318, 319.

"Kutner"—Luis Kutner.

Attorney Kutner represented Lahman in these proceedings until about the middle of 1960 when Lahman retained attorney Harkrider who since prior to November 16, 1960 has been in charge of these proceedings on behalf of Lahman. 2 abs 495.

"Lahman"—John Harold Lahman and, wherever applicable, Mildred R. Lahman.

John Harold Lahman, now deceased, was plaintiff-petitioner-appellant until his death February 9, 1967. Mildred R. Lahman is widow of John Harold Lahman and administrator of his estate and by order of appellate court entered May 16, 1967 was substituted herein as plaintiff-petitioner-appellant in lieu of John Harold Lahman.

"Lahman Inc."—J. H. Lahman Inc. a purported Illinois corporation.

"loan company"—W. E. Gould and Company, an Illinois corporation, one of the defendants.

"Martin"—Herbert O. Martin

For several years prior to June 21, 1949 Martin was plant superintendent of the Rockdale properties while owned and occupied by the U.S. He was very familiar with the properties. He was retained as general superintendent by Lahman from June 21, 1949 to May 29, 1950 while Lahman or Interlake operated the Rockdale properties. He was also retained by Gould as general superintendent of the Rockdale properties after May 29, 1950 and until he died in the fall of 1956. 4 abs 32, 54, 206, 302.

"master"—Philip H. Mitchel the master in chancery to whom this case was referred.

"NSF"—not sufficient funds

Some of the checks which Lahman gave the loan company in the 107 exchange check transactions were returned to the loan company by the drawee banks because Lahman did not have sufficient funds with the drawee banks to

honor such checks. These dishonored checks are identified by the letters NSF.

"Rockdale properties"—Three parcels of land containing approximately 26.54 acres located in section 20, township 35 north, range 10 east of the third principal meridian, in Will county, Illinois, described in sales agreement dated April 10, 1950 between the U.S. and Interlake—dx 21—and the buildings and improvements thereon or appurtenant thereto at the time in question.

The Rockdale properties are located in Rockdale, Illinois, which adjoins Joliet Illinois, on the southwest. The properties are about two miles southwest of the downtown district of Joliet and about 38 miles southwest of Chicago. px 114; 1 abs 178.

"Ronin"—Harold F. Ronin

Ronin was an attorney who practiced law in Chicago, Illinois. He was assistant secretary and registered agent of Interlake from November 9, 1949 to June 1, 1950; he was a director and vice-president of Interlake from April 3, 1950 to June 1, 1950; and he acted as general counsel for Interlake from August 1949 to May 29, 1950. dx 6; 1 abs 218, 219; 4 abs 624.

After May 29, 1950 Ronin asserted various claims against Interlake, including an action for attorney's fees in the amount of $26,700 entitled *Ronin* v. *Interlake* no. 52 S 9540. 4 abs 624.

"Sawyier"—Calvin P. Sawyier

Attorney Sawyier is a member of the Winston firm and since August 1, 1962 has been actively representing defendants in these proceedings. 2 abs 488.

"Snyder"—Eva Snyder

Snyder was a real estate broker who conducted business in Joliet. She performed services as broker in the sale of the Rockdale properties by WAA to Lahman and Brubaker. 4 abs 155.

"U.S."—The United States of America

"WAA"—The War Assets Administration

The WAA was a federal governmental agency originally provided for by executive order no. 9689 of January 31, 1946 (11 *F.R.* 1265; *U.S. Code Cong. Service* 1944 p 764) as amended had general supervision and direction, as provided in the Act, over the care and handling and disposition of surplus property.

"Winstin"—Mural J. Winstin

Attorney Winstin has appeared herein as attorney for the master. 2 abs 498.

"Winston firm"—Winston, Strawn, Smith & Patterson

The Winston firm on August 1, 1962 became attorneys herein for defendants in lieu of Abraham and Dordek. 1 abs 135.

APPELLATE COURT OPINION OF APRIL 18, 1967

This is an appeal from a decree of the Circuit Court of Cook County which dismissed the plaintiff's complaint, awarded the sum of $34,086.00 to the defendants and assessed the sum of $40,956.70 in master's fees equally between the two parties. Plaintiff raises four issues on this appeal: (1) that the chancellor erred in refusing to allow him to file his amended and supplemental complaint; (2) in denying his petition to suppress the master's report; (3) in issuing a decree which dismissed the plaintiff's amended complaint for want of equity and which entered judgment against the plaintiff in the sum of $34,086.00 and assessed costs equally between the parties; and (4) in allowing master's fees in the sum of $40,956.70.

The evidence in this case shows that the plaintiff, John Harold Lahman, was engaged in making profits out of speculative business ventures, and that the defendant, the now-deceased W. E. Gould and his company, W. E. Gould and Company were engaged in the making and brokering of loans to high-risk business ventures such as the plaintiff dealt in. Beginning in 1945, Lahman commenced borrowing money at high interest rates (commissions charged by Gould averaged around 20% per loan) from defendant, W. E. Gould and Company. On many of these ventures Lahman was making such profit that the high interest rates were a minor factor.

In February 1949, Lahman and one of his associates, Henry J. Brubaker, accepted a letter of intent to purchase a Navy Small Parts Plant at Rockdale, Illinois, from the War Assets Administrator, at a price of $875,000.00. The property consisted of approximately 26 acres, improved with buildings, containing about 700,000 square feet of space, which the plaintiff planned to lease for industrial use. In April 1949, plaintiff and Brubaker formed an Illinois corporation, Interlake Industries Corporation, hereinafter referred to as "Interlake," for the purpose of taking title to and possession of the property. Shortly after the formation of the corporation, Brubaker, because of illness, assigned to Lahman all of his right, title and interest in the letter of intent.

After June 1949, Gould and Company commenced to make substantial loans to Interlake, for which it received notes of Interlake. Interlake also picked up outstanding Lahman notes held by Gould and Company by the substitution of Interlake notes, thus in effect borrowing money on the very asset he was buying.

In 1950, Lahman and Interlake were in serious financial distress due to unfavorable economic conditions and, according to Lahman, a severe winter. Gould and Company held Lahman and Interlake notes and some Lahman "NSF" checks. It became apparent that the only way in which Lahman could salvage anything was to find a purchaser of the stock of Interlake or of all of its assets. Attempts were made to find a buyer. On March 27, 1950 the property was offered to H. A. Karsten for $1,150,000.00, which offer was not accepted, and in May the stock was offered to Arnold Hartman for $1,000,000.00, out of which sum Lahman was to pay $100,000.00 of notes payable. This offer also was not accepted. On May 29, 1950, Lahman and defendant W. E. Gould entered into a contract on behalf of Gould's company whereby Lahman completely parted with his interest in Interlake for a price of $960,000.00. The master found that this agreement

"was an arms length business deal between two competent businessmen, each seeking to salvage as much as they could in the face of the prospect of a default on a land purchase contract" which indeed it was.

Subsequent to the sale of the Interlake stock on May 29, 1950 the defendants refused to lend Lahman any more money. They suggested that Lahman organize a corporation, J. H. Lahman, Inc., which he did. The apparent purpose for organizing this corporation was to avoid the effect of the usury law. Lahman had pledged 55.2 shares of Frantz Manufacturing Company stock with the First National Bank of Chicago as security for a loan of $21,000.00. The Frantz stock had been the basis of Lahman's financial power; the company was a family-owned manufacturing company in which Lahman was not only a substantial stockholder but was also an officer drawing a salary of $40,000.00 per year. In July 1950, Lahman borrowed $21,000.00 through J. H. Lahman, Inc. from the defendants to pay off the First National Bank loan. Lahman, Inc. was charged a commission of $5,000.00 on this transaction by the defendants who took as collateral security the 55.2 shares of Frantz that had been held by the First National Bank. In November of the same year Lahman faced a substantially similar problem involving a loan from the National Bank of Sterling, where he had pledged 55 shares of the Frantz stock as security for a loan of $22,000.00. Once again the defendants loaned him money and took as security the Frantz stock and charged a commission of $4,400.00. Lahman, through his company, J. H. Lahman, Inc., continued to borrow money from the defendants, not from any coercion by the defendants, but as a result of Lahman's indebtedness to persons other than the defendants.

Shortly prior to June 26, 1951, Lahman approached Gould for a loan of $15,000.00 to $20,000.00 and was turned down by Gould who said he could not loan any more

money "because your collateral is used up." On June 26, 1951 the parties signed an agreement which recited that Lahman in consideration of the cancellation of the notes totaling $104,000.00 and the payment to him of $15,000.00 in cash, sold his 117.2 shares of Frantz stock to Gould. As he did in connection with the sale of the Interlake stock, Lahman claimed that the sale was not an absolute sale, but was merely a new collateral agreement to secure loans already made with Gould and Company. By the very terms of the agreement which Lahman signed on June 26, 1951, however, it is conceded that the transaction was a sale of the Frantz stock, "This stock is definitely and absolutely sold to us as of this day. Should we desire to sell this stock we will first offer it to you."

As we have already noted, plaintiff raises four issues on this appeal, the first of which is that the trial court erred in denying plaintiff Lahman leave to file an amended and supplemental complaint in excess of eighty pages, following the filing of the master's report. In denying the petition the trial court found: (1) The sufficiency of the evidence contained in the master's report, the transcript and supporting documentary matter, is not challenged by any of the parties to these proceedings as not representing all the evidence respectively offered in support of the merits or substantive issues involved; (2) the proferred complaint was not of sufficient substance or relevance to reopen the hearings on the merits or to have the cause to be reheard on the merits; and (3) the filing of the motion by the plaintiff after the master's report had been filed (some nine years after the filing of the original complaint) came too late to allow the filing of the amended and supplemental complaint.

It is clearly the law in this state that the granting or denying of an amendment to the pleadings is a matter for the discretion of the trial court whose ruling will not be disturbed on review, absent a clear showing of abuse of

that discretion. *Deasey* v. *City of Chicago,* 412 Ill. 151, 105 N.E. 2d 727; *Old Salem Chautauqua Association* v. *Assembly of God,* 13 Ill. 2d 258, 148 N.E. 2d 777; *Hall* v. *Gerdes,* 68 Ill. App. 2d 119, 215 N.E. 2d 8. The test to be applied in determining whether the exercise of discretion with respect to the allowance of an amendment of the pleadings was proper, is whether it furthers the ends of justice. *Bowman* v. *County of Lake,* 29 Ill. 2d 268, 193 N.E. 2d 833.

Plaintiff's rationale in filing the amended and supplemental complaint is that he was distraught and in financial straits and did not have accurate or adequate information, with the result that his original and amended complaints contained some "improvident, inaccurate or inept allegations"; that over a three and one-half year period the defendants stated and represented that this cause should be decided on the basis of the "extended evidence, both oral and documentary" which "was offered before the master"; but that notwithstanding the above, the master devoted thirty pages of his report to an analysis of the pleadings. This procedure the plaintiff claims was extremely inequitable and unfair because an extended analysis of the pleadings was unnecessary and because the incorrect allegations on which the master relied were corrected or superseded by accurate statements in the statements of facts and other documents filed by the plaintiff with the master.

It was manifestly not an abuse of discretion for the trial court to have denied plaintiff's petition to file his amended and supplemental complaint. This complaint came very late in the day of an already expensive and lengthy proceeding, during which time plaintiff had already had two opportunities to assert his claims. We see no abuse of discretion in denying him a third attempt. Moreover, on the basis of plaintiff's allegations it would be necessary for this court to find both that an analysis of the pleadings was crucial to the validity of the master's report and that, that analysis was faulty because of the alleged inaccura-

cies in the original and amended complaint. It is not apparent, either from the plaintiff's brief or from the record or from a reading of the master's report, that the master's analysis of the pleadings included therein, was critical to the sufficiency of that report. As pointed out by the trial court, no attack was made on the sufficiency of the evidence contained in the report. Moreover, if there were inadequacies in the original and amended complaints, there is no showing of what these inadequacies are or in what way the amended and supplemental complaint would cure these defects. In short, we are of the opinion that the amended and supplemental complaint was of little substance or relevance.

Plaintiff next contends that the trial court should have granted his petition to suppress the master's report and for certain other relief.

Plaintiff cites three items in support of his allegation that the master's report is biased in favor of the defendant and should have been suppressed: (1) the master ignored the testimony that the value of the Interlake stock, whose sole asset was the Rockdale property, as of May 29, 1950 was $1,541,920.00; (2) the master ignored testimony that the value of the 117.2 shares in Frantz was $1500.00 per share on June 26, 1951; and (3) the master assumed, without evidence, that the Korean War which began in June 1950, influenced the value of the Rockdale property and consequently post-Korean War values were irrelevant as to the Pre-Korean War values.

As already noted, Lahman and one of his associates, Henry J. Brubaker, bought the Rockdale property from the War Assets Administration for the sum of $875,000.00, and took title on behalf of Interlake. When the plaintiff ran into financial difficulties in this venture attempts were made to dispose of the Interlake stock before the eventual sale to Gould. On March 27, 1950, the stock was offered to H. A. Karsten for $1,150,000.00 which offer was not ac-

cepted. In May 1950, the stock again was offered for sale to Arnold Hartman for $1,000,000.00 out of which sum Lahman was to pay $100,000.00 in notes payable, for a total selling price of $900,000.00. This offer was also not accepted. There was also testimony by one of defendants' expert witnesses that the value of Interlake's Rockdale property was $885,000.00 on the date of the sale to Gould. In view of considerable evidence that the Interlake stock was worth not more than $1,000,000.00, it cannot be said that the failure of the master to cite the considerably larger figure offered by plaintiff's expert witness is indicative of any prejudice on the part of the master.

Plaintiff's allegation in regard to the Frantz stock is likewise lacking in substance. Lahman, himself, testified that the highest price ever paid for Frantz stock was $600.00 per share. Plaintiff also testified that the stock had a book value of $1,000.00 per share in 1949, and that it was increasing in value by approximately $100.00 per year. Gould paid nearly $1,000.00 per share when he bought the stock in 1951. The master's failure to include the estimate of plaintiff's witness who was also a personal friend and officer in Frantz does not support an inference of prejudice.

Plaintiff's third claim of prejudice, that the master prejudiced the plaintiff by taking into account the economic effects of the Korean War is similarly lacking in merit. As a matter of law, it is clear that our courts will take judicial notice, and will not require proof, of periods of inflation and deflation. *Cent. Ill. Public Service* v. *Thompson,* 1 Ill. 2d 468, 115 N.E. 2d 888; *People ex rel Schmulbach* v. *City of St. Louis, Mo.* 408 Ill. 491, 97 N.E. 2d 252.

In view of the utter paucity of the evidence on the issue of the prejudice of the master, and, the overall fairness of his report, we hold that the trial court was not in error when it denied the plaintiff's motion to suppress.

Lahman's next contention is that he is entitled to recover the Interlake stock and the shares in Frantz by way of redemption, restitution or constructive trust. The gist of the plaintiff's argument is that, (1) there was no sale, but (2) if there was a sale, he has a right of redemption because of the existence of a fiduciary relationship or because of the existence of an oral understanding, (3) or the sale is void because the sale price was unconscionable.

Plaintiff, in effect, is asking this court to substitute our judgment in place of the findings of the master and of the trial court. That is something that this court should not do unless the findings of the master are manifestly against the weight of the evidence. *Rose* v. *Dolejs*, 1 Ill. 2d 280, 116 N.E. 2d 402; *Punzak v. Delano*, 11 Ill. 2d 117, 142 N.E. 2d 64; *Gallagher* v. *Girote*, 23 Ill. 2d 170, 177 N.E. 2d 103.

The evidence establishes that the transactions of May 29, 1950 and of June 26, 1951 were unconditional sales of Interlake and Frantz stock. In a supplementary letter to the May 29, 1950 agreement, it is stated that:

> "These notes (held by Gould and Company) are considered as part payment on the purchase price of all the outstanding and issued shares both common and preferred of Interlake Industries Corporation as more fully described in a purchase contract dated May 29, 1950."

In the letter embodying the June 26, 1951 agreement it is stated:

> "This stock is definitely and absolutely sold to us as of this day. Should we desire to sell this stock we will first offer it to you."

Moreover, there is testimony (later recanted) that Lahman treated the May 29, 1950 and June 26, 1951 transactions as sales for federal income tax purposes. As we noted earlier, attempts to sell the Interlake property had been made before the sale to Gould. Finally, plaintiff's claim that the agreements were modified oral agreements made at the time the written agreements were made is

not credible. The only evidence that there was such an agreement is plaintiff's own testimony, which is contradicted by the fact that plaintiff had previously testified under oath on different occasions. (Brubaker v. Gould, 34 Ill. App. 2d 421, 180 N.E. 2d 873.) that the transactions were outright sales.

We have already considered the value of the Interlake stock and the shares in Frantz. In view of that finding we cannot say that the defendants paid an unfair price for the stock.

Plaintiff also contends that a confidential relationship existed between him and the defendants, that the defendants violated the confidential relationship for which reason the Interlake and Frantz transactions should be voided. Equity will raise a trust by construction where there is a fiduciary or confidential relationship and a subsequent abuse of the relation and where actual fraud makes it necessary to protect the rights of the defrauded party and promote the interests of society. *Kapraun* v. *Kapraun*, 12 Ill. 2d 348, 146 N.E. 2d 7; *Carroll* v. *Caldwell*, 12 Ill. 2d 487, 147 N.E. 2d 69; *Kochorimbus* v. *Maggos*, 323 Ill. 510, 154 N.E. 235. Plaintiff in this case has produced no evidence of any specific acts which would lead this court to believe that a relationship other than debtor and creditor existed. Where such a relation does not exist as a matter of law and is sought to be established by parol evidence, the proof must be clear and convincing, and so strong as to lead to but one conclusion. *Mortell* v. *Beckman*, 16 Ill. 2d 209, 157 N.E. 2d 63; *Lux* v. *Lelija*, 14 Ill. 2d 540, 152 N.E. 2d 853; *Lawrence* v. *Muter*, 171, F. 2d 380. That is not the case in this situation.

Plaintiff's last point on this appeal is that the master's fees should be reduced or disallowed and that the master's report should be reduced or disallowed and that the master's report should be suppressed because of irregularities in making of deposits with the master.

Beginning on June 7, 1961, about six years after this cause of action was referred to the master, a series of four payments of $5,000.00 each was deposited with the master without the knowledge or order of the court. Defendants contend that the payments were made pursuant to an agreement between the parties whereby the defendants agreed to guarantee the master's fees and to make deposits on demand of the master. The evidence on the existence of this oral agreement is conflicting.

Whether the alleged agreement actually existed or not, the plaintiff is quite correct in his assertion that the payments to the master violated both Chap. 53, Sec. 38, Ill. Rev. Stat. 1963, and Rule 9.3, Rules of the Circuit Court, which are as follows: Chap. 53, Sec. 38, Supra.

> ". . . Upon reference of any matter to the master in chancery the court may, in its discretion, at the time of such reference or at any subsequent time, order any party seeking to offer evidence before the master to deposit with the clerk of the court such sum or sums as may be fixed by the court to secure the payment of any part or all of the costs of such reference; . . ."

Rule 9.3 (a), Supra.

> "DEPOSITS AND STIPULATIONS. Before the disposition of all objections to his report, the master shall not request or accept from a party or attorney any stipulation as to the amount of the master's fees. Before the taxation of his fees, the master shall not request or receive any deposit or payment for his services upon the reference except
>
> (i) upon approval by the court; or
>
> (ii) for accrued fees for the taking and reporting of testimony at the statutory rate and for taxable stenographer's fees."

Rule 9.3(d) Ibid., further provides that:

> "The court in its *discretion* (emphasis added) may disallow master's fees in whole or in part in respect to any improper proceedings occasioned by the fault of the master."

From a reading of the above provisions it is clear that they do not provide for the suppression of the report because of irregularities in the making of payments to the master. The most that could have been done under the circumstances and provisions of the rules of the Circuit Court was the taking away of all fees earned by the master and that was a remedy available to the court in all cases. The remedy of suppression is not given. There was not the slightest evidence of any prejudice to the plaintiff which would warrant the fixing of the fees by anyone other than the court which heard the matter, and no prejudice in the receipt of any deposits in advance of the court's fixing of the fees.

The chancellor found:

"1. That the court has jurisdiction of the parties hereto and the subject matter hereof, and that said decree should contain the following findings:

(a) That said master's report contains a proper and accurate summation of the facts; and, the master's analysis of the facts therein and his application of the law thereto reflects a high degree of competency in conducting the hearings before him as well as a full comprehension of the issues involved.

(b) The findings of fact, the conclusions of law and the recommendations contained in said master's report represent a fair and reasonable result derived from the hearings before him, as revealed from the transcript of such proceedings.

(c) Said master's report should be approved by this Court.

(d) The Certificate of Fees and Charges of the master attached to his report, which was submitted for the consideration of this court, without objection thereto, should be approved and his said fees and charges should be assessed and charged as costs of these proceedings.

(e) The defendants, as a unit, voluntarily deposited with the master, during the course of the hearings, the sum of $20,000.00 as an assurance for payment to the master their share of his fees and charges and,

with the additional consideration that certain equities on the question of dividends were found by the master in favor of the plaintiff, it is reasonable to assess the costs of the proceedings equally against the plaintiff and the defendant W. E. GOULD & COMPANY. It is the opinion of the court that the deposit for master's fees made by the defendants in no way influenced the judgment or opinion of the master, as the master's report, in no respect, indicates a prejudiced determination of the facts, based upon the evidence submitted."

This was a clear expression of opinion by the chancellor who dealt with this case and knew more about it than any other person, and should be controlling in the fixing of the master's fees. Hereinbefore we found that the report of the master was fair and accurate.

The only remedy provided by the statute is for a reduction or disallowance of the master's fees. It is clear that the making of the payments had no effect on the fairness of the report. While we do not approve of or condone the practice of making deposits with the master without the knowledge or approval of the court, we feel that the exercise of discretion by the chancellor should not be disturbed absent any showing of wrongdoing on the part of the master or the defendants.

Plaintiff also claims that the trial court erred in approving the $40,956.70 master's fee. The basis of the plaintiff's complaint on this point is that the master's report failed to contain a request for an order taxing fees as required by rule 9.2 of the Circuit Court. While the plaintiff filed a petition to suppress the master's report he at no time attacked the amount of the fees or the manner of certification, nor did he make any objection to the trial court on this matter. Plaintiff's failure to preserve as an issue the propriety of the master's fees precludes our consideration thereof. *Mitchell* v. *Art Institute of Chicago*, 269 Ill. 381, 109 N.E. 1008.

For the above reasons the decree is affirmed.

APPELLATE COURT JUDGMENT OF APRIL 18, 1967

The decree of the Circuit Court of Cook County is AFFIRMED.

It is further ordered by the Court that the said W. E. Gould Company and Harriet B. Gould, Executor of the Will of W. E. Gould, Certain Appellees, recover costs from Appellant.

It is further ordered by the Court that the said Philip H. Mitchel, Certain Appellee, recover costs from Appellant.

Execution may issue.

ILLINOIS SUPREME COURT ORDER OF SEPTEMBER 26, 1967

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioner costs by them in this behalf expended, to be taxed in due course of administration.

ILLINOIS SUPREME COURT ORDER OF NOVEMBER 21, 1967

And now, on this day, the Court having duly considered the motion by petitioner for reconsideration of order denying petition for leave to appeal and that petition be treated as a petition for leave to appeal as of right, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by petitioner for reconsideration of order denying petition for leave to appeal and that petition be treated as a petition for leave to appeal as of right be, and the same is, denied.

First informal 1-page letter dated May 29, 1950
(px 46; dx 3)

Mr. W. E. Gould
W. E. Gould and Company
39 South La Salle St.
Chicago, Ill.

Chicago, Illinois
May 29, 1950

Dear Mr. Gould:

Pursuant to our recent conversation the undersigned, president of Interlake Industries Corporation and owner of seventy five percent (75%) of the outstanding capital stock of Interlake Industries Corporation, an Illinois corporation does hereby agree to deliver to you all of the outstanding capital stock of Interlake Industries Corporation consisting of Six Hundred and Fifty (650) shares of Preferred Stock of $100 par value per share and Ten Thousand shares of Common Stock of $1.00 par value per share, for a total consideration of Nine Hundred and Fifty Thousand Dollars ($950,000.00). The above mentioned stock is all the stock of Interlakes Industries Corporation issued and outstanding. The above is subject to the following terms and conditions:

1. J.H.Lahman and the stockholders of Interlake Industries Corporation agree to pay all outstanding debts and obligations due as of this date with the exception of Seven Hundred and Sixty Thousand Dollars ($760,000.00) due the United States Government on a purchase contract between War Assets Administration, J.H. Lahman and Interlake Industries Corporation.
2. The said W.E.Gould agrees to turn back to J.H.Lahman and/or Interlake Industries Corporation all notes and collateral of the said J.H.Lahman and/or Interlake Industries Corporation totalling One Hundred and Seventy Nine Thousand Dollars ($179,000.00) as they mature and to pay to J.H.Lahman the sum of Eleven Thousand Dollars ($11,000.00) in cash in the following manner:

   $2400.00 herewith the receipt of which is hereby acknowledged. $8600.00 balance to be paid $2600.00 on June 5, 1950 and $6000.00 on July 1, 1950.

The said W.E.Gould is to retain twenty five (25) shares of stock of Frantz Manufacturing Company until all Interlake Industries stock is turned over to him and outstanding bills against Interlake Industries Corporation are all paid and receipted.

Possession of the properties near Joliet, Illinois owned by Interlake Industries Corporation is to be given as of June 1, 1950, to W.E.Gould and Company.

INTERLAKE INDUSTRIES CORPORATION

by /s/ J. H. Lahman
President

/s/ J. H. Lahman
J. H. Lahman

Accepted:
W.E.GOULD AND COMPANY

by /s/ W. E. Gould
President

/s/ W. E. Gould
W.E.Gould

Received on 6/2/50 $1000 as part payment on $2600 JHL
Received on 6/6/50 $1600 in full payment of $2600 due 6/5/50 JHL
Received on 7/1/50 $5000 and credit of $1000 to apply on offset making a total credit of 6000 JHL
Received 10/15/52 $500 payment in full of sale contract JHL

Second informal 1-page letter dated May 29, 1950
(px 49; dx 4)

CEntral 6-2522

W. E. GOULD & CO.
Financing - Loans
Suite 1124 - 39 South La Salle Street
Chicago 3

Catholic Securities

Representing
B. C. Ziegler & Co.

May 29, 1950

Mr. J. H. Lahman and
Interlake Industries Corporation

Gentlemen:-

This letter will confirm the settlement reached today between yourself and W. E. Gould and Company wherein it has been agreed that all of the notes of J. H. Lahman personally, and J. H. Lahman and Interlake Industries Corporation totaling $179,000.00 due W. E. Gould and Company as of this day, shall be considered paid. These notes are considered as part payment on the purchase price of all of the outstanding and issued shares both common and preferred of Interlake Industries Corporation as more fully described in a purchase contract dated May 29, 1950.

Very truly yours,

W. E. GOULD AND COMPANY

By /s/ W. E. Gould
W. E. Gould

The above letter correctly sets
forth the terms of our settlement

/s/ J. H. Lahman
J. H. Lahman

Interlake Industries Corporation

By /s/ J. H. Lahman
J. H. Lahman, President

First informal 1-page letter dated June 26, 1951
(px 58)

CEntral 6-2522

W. E. GOULD & CO.
Financing - Loans
Suite 1124 - 39 South La Salle Street
Chicago 3

Catholic Securities — Representing B. C. Ziegler & Co.

June 26, 1951.

Mr. J. H. Lahman,
c/o Frantz Manufacturing Co.
Sterling, Ill.

Dear Mr. Lahman:

You were in our office today and in our conversation we agreed at your request that we would purchase your 117.2 shares of Frantz Manufacturing Company common stock which we now hold as collateral at the price of $1000 per share which amounts to $117,200.

Your notes which we hold amount to $104,100 so we will have to pay to you the difference or $13100. You have paid us advance commission for which we will rebate you $1900 so we will owe you $15,000 for this stock which is the agreed amount. We have paid you on this account $6500.00 in cash today so we still owe you $8500 which we will pay you on July 2, 1951.

This 117.2 shares of stock is to be transferred on the books of the corporation into the name of W.E.Gould and Company or their nominee on August 15,1951. We are to get the dividends on this stock on January 2, 1952.

This stock is definitely and absolutely sold to us as of this day. Should we desire to sell this stock we will first offer it to you.

Very truly yours,

W. E. Gould and Company

/s/ W. E. Gould

June 26, 1951.

This is acceptable to me.

J. H. Lahman,

By /s/ J. H. Lahman

June 26 1951 Paid 6500.00

June 30 1951 Paid 8500.00

Second informal 1-page letter dated June 26, 1951
(px 59)

CEntral 6-2522

W. E. GOULD & CO.
Financing - Loans
Suite 1124 - 39 South La Salle Street
Chicago 3

Catholic Securities

Representing
B. C. Ziegler & Co.

June 26, 1951

Mr. J. H. Lahman
c/o Frantz Mfg. Co.,
Sterling, Ill.

Dear Mr. Lahman:

You were in our office today and in our conversation, we agreed, at your request, that we would purchase your 117.2 shares of Frantz Manufacturing Company common stock which we now hold as collateral, for the sum of $110,000 and in addition thereto, we are to pay you $15,000 in cash after this transaction is completed. Your notes, which we hold and which we are cancelling, amount to $104,100.

We have paid you on this $15,000 item in cash today, $6500.00 and we are owing you $8500.00 which we will pay you on July 2, 1951. The difference, or $9100, we are deducting from your notes in order to clear this matter up, as rebate account of commissions.

This 117.2 shares of stock is to be transferred on the books of the corporation into the name of W. E. Gould and Company or their nominee on August 15, 1951. We are to get the dividends on this stock, October 2, 1952 and thereafter. This stock is definitely and absolutely sold to us as of this day. Should we ever desire to sell this stock, we will first offer it to you.

Very truly yours,

W. E. GOULD AND COMPANY

/s/ W. E. Gould

June 26, 1951.

This is acceptable to me.

J. H. Lahman,

By /s/ J. H. Lahman